

FILED  
US DISTRICT COURT  
DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

MARK R.M. HOLMSTRAND,

Plaintiff,

vs.

Case No. A05-0066 CV (JKS))

NEW YORK LIFE INSURANCE  
COMPANY, a foreign corporation, PAUL  
REVERE LIFE INSURANCE COMPANY, a  
Massachusetts Corporation,  
UNUMPROVIDENT CORPORATION, a  
Delaware Corporation (d/b/a, *inter alia*, Paul  
Revere Life Insurance Company, Unum Life  
Insurance Company, a Maine Corporation,  
Provident Life and Accident Insurance  
Company, a Tennessee Corporation, and  
GENEX, a Pennsylvania Corporation), and  
ROBERT LEIMGRUBER, an Alaska  
Resident.

MOTION FOR SANCTIONS FOR  
OBSTRUCTING 30(b)(6) DEPOSITIONS

1  
2 Mark R.M. Holmstrand asks this Court to sanction defendants New York Life, Paul  
3 Revere and UnumProvident for failing to produce knowledgeable witnesses for noticed 30(b)(6)  
4 depositions held in Worcester, Massachusetts on October 25, 2005.

5 Mr. Holmstrand requests the Court to order sanctions for the wasted time and  
6 inconvenience caused by this tactic, to require the defendants to produce new knowledgeable  
7 witnesses, and to require the defendants to bear the cost of travel, and attorney's fees for the time  
8 involved in these repeat depositions to be held in counsel's office in Bremerton, Washington or  
9 alternatively at counsel's Anchorage office.

10 This motion is brought pursuant to Fed. R. Civ. P. 37(b)(2) and supported by the attached  
11 memorandum of law, affidavit of counsel and exhibits.

12 Because the memorandum discusses matters that are subject to protective order and  
13 contains testimony that may be subject to protective order it is filed under seal.

14 Similarly, because certain exhibits are subject to protective order, or make reference to  
15 protected materials they too are filed under seal.

16 DATED this 5<sup>th</sup> day of December 2005.

17 

18 Jeffrey K. Rubin, AK Bar No. 8206061  
19 Friedman, Rubin & White  
20 Attorneys for Mark Holmstrand

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Revere Life Insurance Company, Unum Life  
Insurance Company, a Maine Corporation,  
Provident Life and Accident Insurance  
Company, a Tennessee Corporation, and  
GENEX, a Pennsylvania Corporation), and  
ROBERT LEIMGRUBER, an Ohio Resident.

Case No. A05-0066 CV (JKS))

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SANCTIONS FOR  
OBSTRUCTING 30(B)(6) DEPOSITIONS**

**CONFIDENTIAL**

**This envelope contains documents filed in  
this case by plaintiff and is not to be opened  
nor the contents thereof to displayed or  
revealed except by order of this court.**

INDEX TO EXHIBITS

1. 8/4/05 Letter from Jeff Rubin to Brewster Jamieson.
2. 9/16/05 Letter from Brewster Jamieson to Jeff Rubin.
3. 10/19/05 Letter from Scott Hendricks Leuning to Jeff Rubin.
4. 7/25/05 Plaintiff's First Requests for Production to UnumProvident.
5. 10/11/05 Notice of Taking the 30(b)(6) deposition of UnumProvident and Paul Revere.
6. 10/24/05 Letter from Brewster Jamieson to Jeff Rubin.
7. 10/25/05 Letter from Jeff Rubin to Brewster Jamieson.
8. 1/18/02 Memorandum Opinion and Order, *Brennan v. Paul Revere, et al.*
9. 4/3/02 Order, *Brennan v. Paul Revere, et al.*
10. 12/17/01 Order, *Russell v. Unum.*
11. 1/10/02 Order, *Unum v. Sheldon, Russell.*
12. 10/31/01 Order, *Stewart v. Paul Revere.*
13. 12/20/01 Order, *Stewart v. Paul Revere.*
14. 10/25/05 Excerpt from the Deposition of Maryann Simmons  
**FILED UNDER SEAL.**
15. 1/19/00 Administrative Services Agreement  
**FILED UNDER SEAL**
16. 1/19/00 Letter to Paul Revere Life Insurance Company  
**FILED UNDER SEAL**
17. 10/25/05 Excerpt from the Deposition of Holly Crawford  
**FILED UNDER SEAL**

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NEW YORK LIFE INSURANCE  
COMPANY, a foreign corporation, PAUL  
REVERE LIFE INSURANCE COMPANY,  
a Massachusetts Corporation,  
UNUMPROVIDENT CORPORATION, a  
Delaware Corporation (d/b/a, inter alia, Paul  
Revere Life Insurance Company, Unum  
Life Insurance Company, a Maine  
Corporation, Provident Life and Accident  
Insurance Company, a Tennessee  
Corporation, and GENEX, a Pennsylvania  
Corporation) and ROBERT  
LEIMGRUBER, an Ohio Resident.

**AFFIDAVIT OF COUNSEL IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR SANCTIONS FOR  
OBSTRUCTING 30(b)(6)  
DEPOSITIONS**

Jeffrey K. Rubin, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for plaintiff Mark Holmstrand in the above-captioned matter. This affidavit is based upon my personal knowledge of the facts stated herein.

1           2.       Exhibit 1 to plaintiff's motion is a true and correct copy of my August 4, 2005  
2 letter to defense counsel concerning proposed depositions in this matter.

3           3.       Exhibit 2 is a letter I received from defense counsel in response to Exhibit 1.

4           4.       As indicated at footnote 4 to the memorandum, at the time the depositions were  
5 being set up the parties scheduled the deposition of defendant Robert Leimgruber. That  
6 deposition was scheduled for October 28, 2005. Because Mr. Leimgruber was reportedly  
7 living in Napoleon, Ohio, October 27, 2005 was scheduled as a travel day. On October 19,  
8 2005 I received a letter from Mr. Leimgruber's counsel that he had not had contact with his  
9 client and that the deposition would need to be continued. This letter confirmed a prior  
10 conversation I had with Mr. Hendricks Leuning in the prior week. Exhibit 3. Upon receipt I  
11 informed counsel for the defendant insurers through e-mail and formal notice. Thus, nearly a  
12 week before the Worcester depositions commenced, there were four days available to do them  
13 had the witnesses been prepared.

14           5.       Prior to sending Exhibit 1 to counsel plaintiff had served defendants with  
15 production requests directed toward the relationship between the defendants. Excerpts from  
16 those discovery requests to Paul Revere, UnumProvident and New York Life are attached as  
17 Exhibit 4.

18           6.       On October 11, 2005, after the deposition dates had been settled on, plaintiff  
19 served deposition notices for the 30(b)(6) depositions. Copies of those notices are Exhibit 5 to  
20 the motion.

21           7.       Exhibit 6 is the letter I received from defense counsel on October 24, 2005  
22 which provided the first notice that defendants would be tendering unprepared 30(b)(6)  
23 deponents. My response to defendants' counsel is Exhibit 7.

24           8.       Exhibits 8-13 are true and correct copies of court order in other cases  
25 sanctioning UnumProvident related entities for discovery misconduct.

26           9.       Exhibit 14 consists of excerpts from the deposition of New York Life 30(b)(6)  
27 designee Maryann Simmons. It is filed under seal because of the protective order in this case.  
28



1           10. Exhibit 15 is the administrative services agreement between Paul  
2 Revere/UnumProvident and New York Life. It is filed under seal pursuant to the protective  
3 order in this case.

4           11. Exhibit 16 is an amendment to the administrative services agreement produced  
5 by defendants in this case. It is filed under seal pursuant to the protective order in this case.

6           12. Exhibit 17 consists of excerpts from the deposition of Paul  
7 Revere/UnumProvident 30(b)(6) designee Holly Crawford. It is filed under seal because of the  
8 protective order in this case.

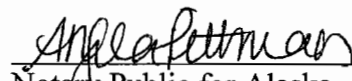
9           13. Our office policy is to pay for refundable and changeable tickets because  
10 oftentimes changes in scheduling occur at the last minute. In this case we needed to change  
11 schedule and flights because of the continuation of Mr. Leimgruber's deposition. The actual  
12 ticket for the entire deposition trip at full coach rate was \$2697.29 including flying to Toledo  
13 Ohio for Mr. Leimgruber's deposition and returning to Anchorage via Cleveland, Ohio.  
14 Plaintiff does not seek compensation for that full fare both because the Leimgruber deposition  
15 was continued for reasons beyond defendant insurers' control and because flying back to  
16 Alaska through Cleveland was a choice by counsel in order to have a brief family visit. In  
17 preparing this motion I asked my office to research what full coach fare is currently between  
18 Anchorage and Boston. I have been told that it is currently \$1285.

19           14. Had the witnesses been properly prepared to testify I believe I could have  
20 completed the depositions either in the time allotted on October 25, 2005, or that week in the  
21 time available after Mr. Leimgruber's deposition was set over.

22           Further your affiant sayeth naught.

23  
24   
Jeffrey K. Rubin

25           SWORN TO AND SIGNED before me this 5th day of December, 2005.

26  
27   
Notary Public for Alaska  
My commission expires: 9/15/07